

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL GARNER,)
Petitioner,)
v.)
MICHAEL THOMPSON,)
Respondent.)

)

Civil Action No. 05-30035-MAP

ANSWER

Respondent, pursuant to Rule 5 of the Rules Governing Section 2254 Cases, answers the petition for writ of habeas corpus as follows:

1. Admitted.
2. Respondent admits that the judgment of conviction under attack here was entered by the court on November 29, 1999.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Respondent admits the allegations in ¶¶ 9 (a)-(c) and (e)(1)-(e)(3). Respondent admits that the grounds raised in the Appeals Court are those set forth in the Brief and Appendix of Defendant, included in the Supplemental Answer at Tab D. Respondent further admits that the grounds raised in the Supreme Judicial Court are those set forth in the Application for Further

Appellate Review, included in the Supplemental Answer at Tab B. To the extent that ¶ 9 contains any further allegations requiring a response, those allegations are denied.

10. Admitted.

11. Respondent admits the allegations in ¶¶ 11(a)(1), (2), (4), (5), (6) and 11(c)(1). Respondent further admits that the grounds raised in the new trial motion are those set forth in the Motion for New Trial, included in the Supplemental Answer at Tab G. To the extent that ¶ 11 contains any further allegations requiring a response, those allegations are denied.

12. Respondent admits that these are the grounds upon which petitioner claims in this petition that he is being held unlawfully. To the extent that the paragraph contains any other factual allegations requiring a response, such allegations are denied, and respondent further denies that any of the grounds stated in this paragraph show that petitioner is being held unlawfully.

13. Paragraph 13 contains no allegations, and to the extent that answer is required, respondent denies ¶ 13.

14. Respondent states that he lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in ¶ 14 of the petition, and the allegation in ¶ 14 is therefore denied.

15. Admitted.

16. Admitted.

17. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 17 of the petition, and therefore denies the allegations.

18. Upon duplication, respondent will file a Supplemental Answer which contains the following documents:

Discretionary Review—Supreme Judicial Court, No. FAR-13804

- (A) Docket Sheets
- (B) Application for Further Appellate Review

Direct Appeal—Massachusetts Appeals Court, No. 2001-P-0659

- (C) Docket Sheets
- (D) Defendant's Brief and Record Appendix
- (E) Commonwealth's Brief
- (F) Opinion of the Court

Motion for New Trial—Hampden County Superior Court, No. HDCR1998-02666, 02630

- (G) Motion for New Trial
- (H) Commonwealth's Opposition
- (I) Memorandum of Decision Denying New Trial Motion

19. In addition, the transcripts of the following proceedings had in the trial court are available, and will be provided to the Court upon request:

- (1) Pre-Trial Hearing—September 7, 1999 (1 Volume)
- (2) Trial—September 7, 1999 (1 Volume)
- (3) Sentencing Hearing—November 29, 1999 (1 Volume)

FIRST AFFIRMATIVE DEFENSE

20. Petitioner has failed to state a claim upon which relief can be granted.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

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ATTORNEYS FOR RESPONDENT

Dated: May 26, 2005